

# EXHIBIT 3

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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TETRIS HOLDING, LLC, and THE  
TETRIS COMPANY, LLC,

Plaintiffs and,

Counterclaim Defendant Civil Action No.

-against-

3:09-CV-6115

(FLW) (DEA)

XIO INTERACTIVE,

Defendant and

Counterclaim Plaintiff.

-----x

August 11, 2011

11:23 a.m.

Videotaped Deposition of JEFFREY C. NEU,  
taken by Plaintiff, pursuant to subpoena, at the  
offices of Kirkland & Ellis, LLP, 601 Lexington  
Avenue, New York, New York, before SUZANNE  
PASTOR, a Shorthand Reporter and Notary Public  
within and for the State of New York.

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ALSO PRESENT:

MICHAEL DAVIDSON, Videographer

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2           A.       No, I have no reason to believe it.

3           Q.       So in the first e-mail on page 2,  
4   it's an e-mail on Monday, August 3rd from Jeanne  
5   Hamburg of Norris McLaughlin to XIO Interactive.  
6   And it reads, "Please see the attached letter."  
7   Do you see that?

8           A.       Yes.

9           Q.       And there's question marks next to  
10   Jeanne Hamburg's name and her firm. Do you know  
11   what those question marks are?

12          A.       I would assume they are characters  
13   that are included in the e-mail which, when it  
14   was printed, did not know how to render.

15          Q.       And Desiree Golen forwarded that  
16   e-mail to you with the notes "finally came..."  
17   Do you see that?

18          A.       I do.

19          Q.       At this point were you anticipating  
20   that XIO would receive a letter from the Tetris  
21   Company?

22          A.       It is definitely --

23                   MS. MAITRA: Objection; vague.

24          A.       It is definitely things that we had  
25   talked about. I'm sure we have. I don't recall

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2 specific conversation, but in the grand scheme  
3 of discussion, I am sure that we discussed  
4 potential claims such as these.

5 Q. And Desiree also wrote, "Any chance  
6 we could chat on the phone about our strategy in  
7 the next few days?" And on the first page at  
8 the bottom is your response to her and you  
9 wrote, "any chance of you guys reskinning?" Do  
10 you see that?

11 A. I do see that.

12 Q. What does reskinning mean?

13 A. Reskinning is where you modify or  
14 otherwise change the graphics or the  
15 presentation of the game as opposed to the form  
16 and function of the game. Or in this particular  
17 case, game. Reskinning is just the changing of  
18 graphics as opposed to form and function.

19 Q. Earlier you mentioned that you had  
20 discussed with XIO the possibility that they  
21 would receive a letter from the Tetris Company  
22 in connection with Mino, correct?

23 A. Yes.

24 MS. MAITRA: Objection; misstates  
25 testimony.

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2 A. I am.

3 Q. Do you think that Pac-Man and  
4 Ms. Pac-Man have the same form and function?

5 MS. MAITRA: Objection. Outside  
6 the scope of this deposition.

7 A. Yes. As far as I am aware of  
8 Pac-Man and Ms. Pac-Man, there could be a  
9 multiple of varieties. But if it involves one  
10 with a little yellow guy eating dots and another  
11 one with a little yellow guy with a red bow on  
12 its head eating dots, the gender of which I will  
13 not comment on, I would consider them similar in  
14 form and function.

15 Q. If the maze design is different in  
16 those games, it still has the same form and  
17 function?

18 MS. MAITRA: Same objections.

19 A. I think that would depend upon --  
20 the analysis of that question would depend upon  
21 more factors than just the maze design.

22 Q. Turning back to this e-mail chain,  
23 Desiree responded to you, "We don't have plans  
24 to reskin. I don't know how else to make Mino  
25 more different than EA's version." And then you

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2       responded to her at the top of the page on  
3       August 25th, "I think there are ways to make it  
4       different than EA's version and I would do as  
5       much of them as possible."

6                   Did you write that?

7           A.       I believe so.

8           Q.       So you were advising her to make it  
9       more different than EA's version, correct?

10                  MS. MAITRA: Objection. Vague and  
11       misstates the document.

12           A.       No, I wouldn't agree with that  
13       characterization.

14           Q.       You said, "I think there's ways to  
15       make it different from EA's version," and you  
16       advised her to do as much of them as possible.  
17       Doesn't that mean take steps to make it -- take  
18       as many steps as you can to make it more  
19       different than EA's version?

20           A.       Oh, in that characterization, I  
21       would agree with that statement, yes.

22           Q.       And then you say, "Here's what  
23       they're claiming in the other suit." What's the  
24       other suit you're referring to?

25           A.       I don't recall.

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2 Q. Is that the lawsuit that the Tetris  
3 Company brought against the makers of the game  
4 Blockles?

5 A. I don't recall but that sounds  
6 good.

7 Q. Are you familiar with that case?

8 A. The name of it and that it existed,  
9 now that you bring it up, yes. But I wouldn't  
10 have recalled it on my own accord.

11 Q. Did you read the complaint in that  
12 case?

13 A. I believe at one time I did.

14 Q. Did you contact anybody who was  
15 involved with that case?

16 A. I don't recall.

17 Q. Did Desiree Golen tell you that she  
18 had contacted anyone who was involved with that  
19 case?

20 A. I think she did, but I don't recall  
21 exactly. It sounds like a conversation we may  
22 have had because I believe she mentioned  
23 something to the effect that they were down the  
24 street from her or something like that.

25 Q. Are there any other cases you can



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2 recall where the Tetris Company sued a developer  
3 of a game that they thought infringed Tetris?

4 A. Not off the top of my head, no.

5 Q. Do you remember Ms. Golen informing  
6 you about such cases?

7 MS. MAITRA: Objection; form and  
8 vague.

9 A. I am confident that she probably  
10 did. She was very thorough in her research.  
11 And if they exist, I'm sure she probably sent  
12 them to me. But I don't recall a specific  
13 instance.

14 Q. When you say "thorough in her  
15 research," do you mean legal research?

16 MR. ULMET: Objection.

17 A. I don't know how we would classify  
18 the difference between legal research versus  
19 other research.

20 Q. Did you ever read her blog about IP  
21 law?

22 A. She has a blog about IP law?

23 MS. MAITRA: Objection; lacks  
24 foundation.

25 A. I may have. But it doesn't ring

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2 any specific bell.

3 Q. Sorry, back to this e-mail, it  
4 says, "Here is what they are claiming in the  
5 other suit," and you quote -- list several  
6 bullet points with quotation marks, correct?

7 A. Yes, that is in the e-mail.

8 Q. Right. Things like geometric  
9 playing pieces formed by four equally sized  
10 delineated blocks, the long, vertical, rectangle  
11 playing field which is higher than wide, the  
12 downward lateral and rotating movements of the  
13 playing pieces, the appearance of a shadow piece  
14 at the bottom of the playing field matrix to  
15 indicate where the Tetromino will drop, the  
16 appearance of a trailer effect after the  
17 Tetromino during a hard drop command, the  
18 display of the next Tetromino that will fall  
19 down the matrix in a small box next to the  
20 playing field, the disappearance of any  
21 completed horizontal line, the display of a  
22 flash effect when a completed horizontal line  
23 disappears, and the subsequent consolidation of  
24 the playing pieces remaining on the playing  
25 field as a result of the downward shift into the

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2       space vacated by the disappearing line.

3                   And then you wrote, "The less of  
4       these we have, the better," correct?

5           A.       Yes.

6           Q.       So you were advising her that the  
7       less of these elements that you had just listed  
8       were in Mino, the better, correct?

9           A.       I believe so, yes.

10          Q.       And when you said, "The less of  
11       these we have, the better," you were talking in  
12       relation to the letter that the Tetris Company  
13       had sent as opposed to making the game better  
14       for aesthetic purposes.

15                   MR. ULMET:  Objection.  You may  
16       answer.

17                   MS. MAITRA:  Objection.

18          Q.       Let me start again.

19                   MS. MAITRA:  Vague, form.

20          Q.       So in this e-mail you were giving  
21       her legal advice as opposed to game development  
22       advice, correct?

23                   MS. MAITRA:  Objection; misstates  
24       testimony --

25                   MR. ULMET:  Objection.

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2 MS. MAITRA: Mischaracterizes the  
3 document and lacks foundation.

4 MR. ULMET: Objection. You can  
5 answer if you understand the question.

6 A. I believe this was a -- I believe  
7 that it would be a mixture of business advice  
8 and legal advice. Do you want me to expand on  
9 that or would you like me to leave it there?

10 Q. No, that's fine.

11 And when you said "the less of  
12 these we have, the better," did you mean it  
13 would be easier to defend against a copyright  
14 infringement claim by the Tetris Company if Mino  
15 had less of these elements?

16 MR. ULMET: Objection.

17 MS. MAITRA: Objection.

18 MR. ULMET: You can answer.

19 MS. MAITRA: Vague.

20 A. I don't know that I want to  
21 speculate as to my state of mind at the time,  
22 but in reading it now, I would assume so.

23 Q. So your advice to her on this day  
24 was to change Mino.

25 MS. MAITRA: Objection.